IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 620 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL DHIRUBHAI IDARIYA

Versus

RAMABEN KANAIYALAL DHOLAKIYA

Appearance: MR SATYEN B RAWAL for the Petitioner.
MR PS CHAMPANERI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/11/2002

ORAL JUDGEMENT

Rule. Mr.P.S. Champaneri waives service of rule on behalf of the Respondent.

With the consent of the parties, the matter is taken up for final hearing today.

The petitioner is the original defendant, against whom the respondent herein had filed a suit, being Civil Suit No.54 of 1996, in the Court of Civil Judge (Senior Division), Surendranagar. In the said suit, an ex parte decree has been passed against the present petitioner on

30.6.1998. Thereafter, the present petitioner preferred the present application under Order 9 Rule 13 of CPC for setting aside the ex parte decree. There was a delay in filing such application. The learned trial Judge, by the impugned order dated 28th April, 2000, condoned the delay in filing such application. However, the petitioner was directed to deposit arrears of rent / mesne profits to the tune of Rs.10,600/-. The said amount was to be deposited on or before 14th June, 2000. The trial court further observed that in case the original defendant fails to pay or deposit the said amount within the stipulated time, the application under Order 9 Rule 13 shall be deemed to be rejected. The said order is impugned in this revision.

At the time of hearing this revision application, learned Advocate for the petitioner pointed out that the petitioner has already deposited the amount, as stipulated by the trial court in its order and because of financial constraint, there is a delay in depositing the said amount, but, ultimately, the said amount is deposited before the trial court on 25th November, 2002. Considering the fact that the petitioner has now already deposited the said amount and the petitioner's Advocate has shown receipt of such payment to the other side, in my view, the trial Judge is required to be directed to hear the application under Order 9 Rule 13, on merits. It is, no doubt, true that there is a delay in depositing the amount, but the learned Advocate has pointed out the reason for such delay.

Considering the facts and circumstances of the case, the revision application is allowed and since the petitioner has already deposited the amount in question, the original plaintiff is permitted to withdraw the aforesaid amount from the trial court. The learned trial Judge is directed to proceed with the said application under Order 9 Rule 13 on merits and dispose of the said application expeditiously, and preferably within a period of three months from the date of receipt of the writ from this Court.

It will be open for the original plaintiff to apply before the trial court for passing further orders in connection with mesne profits. If any such application is filed, the trial court may also dispose of the said application in accordance with law and on its own merits. The interim relief granted by this Court is ordered to be continued till the application under Order 9 Rule 13 is disposed of.

Rule is accordingly made absolute with no order as to costs.

Direct service of the writ of this Court is permitted and it will be open for the respondent to take direct service of the writ of this Court.

26th November, 2002 (P.B. Majmudar, J.)

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(apj)